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PROJECT NO. 53140

**REVIEW OF TEXAS UNIVERSAL
SERVICE FUND**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

COMMENTS OF DIALTONE SERVICES, L.P.

NOW COMES DialToneServices, L.P. (DTS) and files these comments in Project 53140. DTS appreciates the opportunity to file comments related to certain aspects of the Texas Universal Service Fund encompassed in this project.

I. Overview

DialToneServices is a satellite-based provider of voice telecommunications and is a Competitive Eligible Telecommunications Provider (CETP) licensed to provide services with Texas Universal Service Fund (TUSF) subsidy support within many small and rural ILEC exchanges.¹

PUC Subst R. 26.407 is the rule that implements PURA 56.032. DTS is concerned that the Commission has implemented the section of 56.032(h) and (j)(1) and (2) that grants subsidy increases to ILECs, but the Commission has not concomitantly implemented Section 26.407(j)(3) of that same rule, that requires all ETPs to receive the same per line support. Because of this failure to implement the like per line support mandate in the rule, the disparity of

¹ PUC Docket 32024; SOAH Docket No. 473-03-0957, *Application of DialToneServices, L.P. to Amend its Designation as an Eligible Telecommunications Carrier and an Eligible Telecommunications Provider to Include Study Areas Served by Certain Rural Telephone Companies*, Final Order June 22, 2006

payments to rural ILECs and other ETPs has increased to a discriminatory level. P.U.C. Subst. R. 26.407(j)(3)² states:

Small and Rural Incumbent Local Exchange Company Universal Service Plan support payments to ETPs other than small ILECs.

The Small and Rural Incumbent Local Exchange Company Universal Service Plan support for ETPs other than a small ILEC will be determined by calculating the per-line support for each small ILEC's study area based on the most recent monthly support using December line counts for the small ILEC. The payment to each ETP other than a small ILEC will be calculated by multiplying the computed per-line amount for the given small ILEC study area by the number of eligible lines served by the ETP in such study area for the month.

The PUC moved forward to implement 26.407(h) and (j)(1) and (2) which allows additional TUSF subsidy increases for rural ILECs, and indeed the Commission has approved dozens of such proceedings, granting additional TUSF dollars to ILECs. Yet, the Commission has not implemented subsection (j)(3), of the same rule. Subsection (j)(3) would set the same level of *per line* support for all ETPs in an exchange – ILECs and Competitive carriers alike.

DTS raised the issue with staff but the only action taken to date was opening of Project 50064 in October of 2019, with no follow-up implementation. The Commission has failed to establish the same per line support for all ETPs, beginning in January 2019 based on December 2018 data, and for every year thereafter, 2020, 2021 and now 2022. If the Commission properly implemented 26.407(j)(3) then CETPs would be receiving the same per line support, adjusted annually, as the ILEC ETPs. DTS asks the Commission to direct staff to go back and true-up the per line support for all non-ILEC ETPs. DTS urges that it is inappropriate to implement only a portion of the rule, and suggests that the rule should not be utilized for ILEC TUSF subsidy

² PUC Substantive Rule 26.407 was adopted in Project 47669 on October 16, 2018 clearly under the PUC's authority from PURA §14.002 and §56.032.

increases without also honoring the commitment to non-ILEC ETPs to receive the same per line support. The Commission may not selectively implement subsection (h) and (j)(1) and (2) while ignoring subsection (j)(3) of the same rule.

PUC Question 1 - the continued appropriateness of using the FCC prescribed rate of return for the mechanism established under PURA §56.032(d), if the FCC still prescribes a rate of return that may be used for that mechanism;

DTS has no opinion on the matter of utilizing the FCC prescribed rate of return.

PUC Question 2 - the efficiency and frequency of adjustment proceedings conducted under PURA §56.032(h) and §56.032(i);

DTS believes the nearly automatic approval of further increases to rural ILECs, without the annual per line calculation mandated by Subst. R. 26.407(j)(3) is a hardship on non-ILEC ETPs, and is also violative of the Commission's own legally adopted rulemaking. PUC Substantive Rule 26.407 was adopted in Project 47669 on October 16, 2018 after notice, comment, workshop and publication. The PUC's authority, also clarified in the final order, for adopting the rule was §14.002 and §56.032 of PURA. DTS proposes that no further approvals under (h) or (j)(1) and (2) are appropriate until the same per line support mechanism is put in place with a true-up for past failures to implement subsection (j)(3).

PUC Question 3 - the frequency and efficiency of determinations made on reasonable and necessary expenses under PURA §56.032(d)(4);

Please see Overview and Response to Question 2.

PUC Question 4 - the effect of changes in technology on regulated revenue and support needs or determinations made under PURA §56.032;

Please see Overview and Response to Question 2.

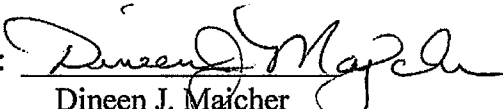
PUC Question 5 - any other relevant information that commenters believe is necessary for inclusion in the report and is in the public interest.

Please see Overview and Response to Question 2.

Dated the 8th day of April 2022

Respectfully submitted,

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